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Ruling the State by Constitution: The Core Task of China's Legal Construction

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Abstract

Rule of law is the important symbol of political civilization in modern society. Ruling the state by constitution means all aspects of the state and social lives are brought into the rule of law in the constitution as the kernel, the state regime is built with the basic value of constitution, and institutional and legal security is provided for harmonious development of the state and society by implementing constitution. Ruling the state by constitution, as the only way for rising of China under rule of law, still can be perfected from the following five aspects: exercising the state power in accordance with the constitution, scientific legislation, and strict enforcement of the law, equal justice and national law-abiding.

Key words: Ruling the country by constitution; Exercising the state power according to the constitution; Rule of law

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INTRODUCTION

The strategic target had been put forward in the 15th National Congress of the CPC, which is "Ruling the

country in accordance with the law, construct a socialist country under the rule of law". Now, the reform principle of unity of the leadership of the Party, the position of the people as masters of the country and law-based governance was emphasized again in the 18th National Congress of the CPC. Over 15 years, the construction and practice of our legal system have promoted the level of rule of law in China. The promotion from legal system to rule of law and the change from running the country according to the rules to rule the country according to the law, reveals a qualitative change of the legal concept of ruler from instrument rationality to value rationality. The course that China constructs socialist legal state is irreversible, which raises a higher request to propel the strategy of ruling the country according to the law. The author believes that ruling the State by constitution, as the core task of China's construction of rule of law, still needs to be improved from the following five aspects: exercising the state power in accordance with the constitution, scientific legislation, strict enforcement of the law, equal justice and national law-abiding.

1. ENHANCING GOVERNING PARTY'S CONSTITUTIONAL THINKING AND ABILITY TO RULE THE STATE BY CONSTITUTION IN THE PROCESS OF SOCIAL TRANSFORMATION

Over thirty years since reform and opening up, Chinese society has experienced the transition and evolution from agricultural society to industrial society, from traditional society to modern society, from closed society to open society. The whole social transformation begins with the switch that of planned economic system to the socialist market economic system. Social economic structure, political and legal system, public culture type, civil values and so on are in profound changes with it.

The reality that multi-interests pattern turns increasingly polarized brings about new challenge to the ruling party's capability of benefit integration and coordination. The ruling party has a correct understanding of the conflicts of different benefit groups and well cope with political pressures from the aspects of safeguarding the fundamental interests of the people. And they meet various kinds of challenges proactively through realizing the transition of their governance style, i.e. the system of leadership formed in planned economic system turns into the system of ruling the country by law and constitution which adapts to socialist market economic system. In terms of democracy, rule of law and human rights which exists in the constitution, democracy is the foundation in public opinion in the governance of the country, and rule of law is the guarantee in the system, and human right is the final target of governance. Therefore, ruling the country by law must be ruling the country by constitution. In terms of its normalized usage, constitution mainly grants, adjusts and regulates state power. In modern times politics civilization, ruling party mainly achieves exercising a certain of authority indirectly by organizing the political power and supervising it working rather than using the power directly, which makes it necessary to rule the state by constitution. It is undoubted that ruling the state by constitution is a strategic measure of ruling party to comprehensively implement the rule of law.

Constitutional thinking is the core of the rule of law thinking, focusing on all citizens, especially remembers in ruling party, have the means and custom to understand, analysis, and solve all kinds of the problem in country and social life by the principle, rules, and spirit of the constitution. Only the ruling party develops the constitutional thinking, can it regard the constitution as starting point all the time, and makes it active guidance to defend the constitution's authority while promote the constitution's value realization. So, people must be soberly aware that the party act within the scope prescribed by the constitution and law is the basic requirement of the country under the rule of law for the ruling party behavior, also is construction of socialist political civilization should have meaning. Being the leader in the state power, the communist party of China rules in the way that implementing political leadership, organizational leadership and thought leadership within the framework of the constitution, and improving the ruling ability of ruling the country by constitution through the implementation of separating the party from the government.

To separate the party from the government means on the basis of the principle of democratic centralism, delimit law border for the operation of the government under the regulative function of the constitution, establish the basic framework of modern government on the basis of actively promoting people's democratic rights. On the premise of the separation of the party from the government, the ruling party mainly wields the national

power through the way to influence the whole process of government operations. Specifically is, on the one hand, it should recommend party elites to voters by organizing the election and exercising the right of nominations, so that it can make them into various government agencies at all levels legally to exercise the power and rely on these elites of the party to carry out the ruling party's idea of government decision-making and implementation. The ruling party, on the other hand, practices deliberative democracy positively on the basis of the implementation of electoral democracy, i.e. absorbs the general public to into policy formation process through a variety of ways to participate in discussions and reach a consensus or party policy. And then, political policy which is favorable to integrating the diverse interests will be rose to the law in the legislative way by the majority of party members in the people's congresses at various levels, so as to provide a new legal basis to govern the country according to law.

2. REALIZING THE SCIENTIFICNESS OF LEGISLATION THROUGH THE SAFEGUARD FUNCTION OF THE PEOPLE'S LIVELIHOOD OF DEMOCRATIC LEGISLATION

The improvement of people's livelihood must be implemented through legislation first, because the main content and function of the law are to rule the rights and obligations of the main element of society, and the essence of the livelihood issues is the right issue, especially the security of social right with the core of survival and development right. Therefore, we must take the purpose of human rights protection, take enjoyment of citizens' constitutional social rights as the goal. And legislation of the people's livelihood that will be formulated must be wide-coverage and potent assurance in labor and employment, income distribution, education fairness, medicine and health care, housing, social insurance, environmental protection and so on to enrich the social law and related law system constantly. Also, the legislation should make inclining protection for the vulnerable groups. Specifically, we must pay equal attention to both the principle of protection and development, on the basis of improving the lives of the vulnerable groups, finally achieve the goal of shaking off poverty and achieve real equality by strengthening the ability of social participation and increasing the chance of development.

In legislative activities represented by the people's livelihood legislation, the main problem is not that the temporary living difficulties cannot be immediately solved but the absence of the vulnerable groups in the process of legislation. This need to give full play of the function to democratic legislation as an interest articulation and channels of information communication, open approaches to all levels to reflect their own demands enable the rights

claims of ordinary citizens' reach the policy makers directly. Specifically, at the beginning of legislation, it should be open to the society to collect the bill first, forming draft legislation through experts' consultation and research planning, achieve the target. Secondly, according to "the legislative law" article 5 that "guarantee the people participate in the activities of legislation through various ways", we should achieve "Open door legislation" by hearing, demonstration, talkfest and other forms as comprehensively as possible absorb legislative proposals from all sides. Finally, vulnerable groups' right to voice and expression should be paid special attention to in the process of legislation so as to reach "loss and not enough". Only ensuring the universality, representativeness and effectiveness of public participation in legislation, can law gain legitimacy and authority, further be conducive to the ruling party to achieve the whole society's integration in interest, value and politics under the condition of information symmetry.

3. ENSURING LAW ENFORCEMENT STRINGENCY THROUGH TRANSFORMING THE GOVERNMENT FUNCTIONS AND STANDARDIZING ADMINISTRATIVE PROCEDURES

After reform and opening up, under the premise of developing the socialist market economy and building a country ruled by law, government functions centralize in four aspects of macro economic regulation, market supervision, social affairs management, and public products supply. But due to the inertia of traditional system and the administrative main body behavior of path dependence, in the process of economic development, the direct intervention and participate in the microscopic economic activities lead that the market mechanism is restrained and social service function of the government become weakened. Therefore, to guarantee the rightness and effectiveness of administrative act, it must realize the change of government function from control to service, for the purpose of providing public services and maximizing social welfare. In order to realize the unification of legality, rationality and flexibility of law enforcement, we must work on the standard of administrative procedure.

Procedure is the life form of the rule of law. If the powerful administrative power is not restrained by corresponding mechanism, the maintenance of civil rights will be difficult to implement and the realization of the rule of law is impossible to talk about. The rules of administrative procedure law on the steps, order, way, time and other elements of the administrative act are essential, whether it is for the traditional interference administration, or the emerging supply of administrative, service administration. Since the reform and opening up, a number of administrative procedures in regulations

are scattered refer to a few plus separate administrative laws and regulations. In recent years, with the gradually increasing in awareness of due process, the administrative punishment law, the administrative reconsideration law, the administrative licensing law, the regulations on the formulation process of administrative regulations or regulations and other procedural regulations promulgated or amended. However, due to the rapid changes of social life, a large number of new public areas are in urgent need of government management, and follow that a number of new types of administrative acts, the responsibility of the corresponding administrative organs and the rights of the administrative counterpart produced, which is difficult to fully cover by the existing procedural norms. Therefore, the future trend of legislation should develop towards the direction of establishing a unified, comprehensive administrative procedure in the point of view that it should start from supervision in advance and afterwards, adhere to the principle of paying equal attention to civil rights and administrative efficiency, and cover the administrative legislation, administrative law enforcement and administrative judicial proceedings.

To achieve the rigor of the law enforcement, the following procedural principle also must be ensured to carry out: first, the law enforcement behavior unauthorized is invalid. It is to say that except that law enforcement can not be beyond the substantive law authority, it also can not be beyond the law enforcement inform, identification, the explain justification, investigation of evidence, the prohibition of unilateral contact, interest avoidance and other procedures. Secondly, administrative functions should be relatively separated. The spirit of procedures "No person shall act as a judge of his own" should be strict observed, and the right of setting and implementation to enforcement matters should be separated to avoid personal dictatorship and self departmentalism of department. Finally, the administrative participation can be implemented. The administrative participation as the hearing is the effective way to supervise the law enforcement for civil and administrative relative persons, and also is the basic form of government affairs, or direct way to protect the citizens' basic right given by the Constitution to criticize, advice, accusation, report and so on. This also helps to enhance the legitimacy of law enforcement and the acceptability of law enforcement results.

4. BY ENSURING THE INDEPENDENCE OF THE EXERCISE OF THE JUDICIAL POWER AND THE LOYALTY OF THE JUDGES TO THE LAW TO ACHIEVE JUSTICE

The 126th article of the Chinese Constitution gives the people's court special power to carry out the trial independently without any illegal interference. Its core

is to ensure that the process of exercise of judicial power is completely independent, and creates a prerequisite for the realization of judicial justice from the procedure. However, under the current judicial system, occupational and professional of the court is not obvious in the external relations with other state organs as well as the internal management system, but a strong administrative management runs through the trial work. As a result, localization and administration of justice lead to damage of the independence of the trial. Therefore, the goal of the reform of the judicial system should ensure that the court is independent in the exercise of judicial power. And the focus should be that the state organs strictly perform their duties in accordance with the provisions of the constitution and laws and clear their status and rights in judicial work, especially clarify the methods and procedures of legal supervision.

The reform of the judicial system wins the organization, personnel and financial security to the normal work of the court, which is the external condition for the realization of judicial justice. And the judge's judicial idea is the internal condition and professional security for the realization of judicial justice. Under the background that the current law and litigation involved in petition issues puzzles the trial work, some judges take the judicial activism as an excuse, use the means of distorting the application and enforcement of the law to meet the unfair requirements from the petitioners who is importunate or offended, and succumb to abnormal performance view that only pursues to patch up a quarrel and reconcile the parties concerned. In fact, the original intention of activism judicial is to require the judge to be active. The judges can use legal reasoning, interest balance, judicial interpretation and other legal methods to identify the original meaning of the law, define rules of application and fill the legal gaps when legal provisions are ambiguous or mutual conflict, or the law is disconnect with social development and appears the absence of legislation, in order to actively respond to the urgent requirement of justice and fairness in society. But judicial activism never means that court could sacrifice the unity and authority of the law as the cost to seek the so-called "social effect" because they fear the minority who use the means of mobbing and other illegal means to ask for the interest out of law. Only by insisting on the judicial logic self-consistent and formal reasoning of justice can it achieve the good legal effect. There were no social effects ignoring the law effect.

The highest state of the pursuit of justice is not only to uphold the law standards but also to be conformed to social justice, but the social justice itself is a difficult unified evaluation criteria. Because of this, Marx is wise to point out, "The judge has no other boss except the law." Moreover, law and social justice are not in contradiction but closely related with the other. The law is exactly to coordinate the changeable concept of justice and interest

appeal through democratic ways, to reach the consensus of the community, and to provide accurate, stable and predictable empirical standard for people. Therefore, judicial activism must take the Constitution and the laws as the bottom line, allow creatively application of the law, but does not allow unauthorized law-making, or abandon the law. In the trial work, as do find out it is beyond the judicial authority, but necessary to deal with the social management loopholes, the court may urge the relevant departments to improve through the judicial proposal, and reasonable extend the trial function, expand the social effects of judicial activities, form benign interaction with social.

5. ENHANCING THE LAW-ABIDING CONSCIOUSNESS BY GUIDING CITIZENS TO FULFILL THE INTRINSIC OBLIGATIONS OF THE CONSTITUTION

The advance of ruling by Constitution and the construction of a nation of laws ultimately depend on the effective implementation of the constitution and the law, and the key and long-term mechanism of the implementation can not only rely on the country's deterrent, but more dependent on the people's legal consciousness and constitutional identity, otherwise the unity of the social community will collapse and the constitutional order will lose balance. Today, China has produced a strong ideological trend of the right center and the supremacy of individual rights, the core of which is to dis sever the logical connection between the constitutional rights and the social community, disregard of the community premise of the enjoy of right, even make the obligation "stigmatized". As a result, the real meaning of the constitution as the law of the protection of human rights is covered, and the system of constitutional right falls into the misunderstanding of apriority and logic-less. It leads to a paradox of modern power theory that they focus on personal development with ignoring community values, results in the individual development loss of conversion. It embodies in some people be mercenary, unscrupulous, selfish, buck-passing and the social morality overall landslide in the process of social transformation, and even emerge threefold malfunction of market, government and social.

In fact, man is a member of the social community, the right is not priori but historically produced in the interaction between life of the people and the community as well as logic relationship. If one person does not want to become an isolated individual, he must seek refuge and care in the community. The existence of the community exactly counts the people's comprehensive and free development as the value pursuit and ultimate concern. Constitutional rights are the qualifications for the individual to integrate into the community life and are the benefits obtained by this. The complete premise of people's right is the existence of the community. The existence of

the community depends on the obligations of its members, and the mutual trust and cooperation between them. This is not only the common morality of the community itself, but also the ethical basis for the people to obey the law. Therefore, as the rule of organizing community, the constitution must be based on the common morality, regulates the internal obligations of the Constitution by the mode of enumerating the constitutional obligatory rules, confirm the way to survive the community to ensure the ultimate realization of the interests of each individual. In short, the internal obligations of the constitution are relative to the instrumental obligation. They have the intrinsic value of the community. It's the obligation that the individual should be the burden for the maintenance of the community, and it is the responsibility of the individual to the community. Constitutional rights and the internal obligations of the constitution are the two dimensions for the individual to be the member of the community, and both of them are indispensable. In addition, the tradition of collectivism that China's constitution contains appearing in the internal obligations of the constitution is conducive to correct the bigotry from the theory of supremacy of individual rights, and play the role of value guidance. By ensuring the fulfillment of the internal obligations of the constitution, the state shape the peoples' constitutional identity and law-abiding awareness of the social community, guide the masses to become citizens, get out of the social moral dilemma, and form a harmonious constitutional order.

CONCLUSION

Rule of law is the important symbol of political civilization in modern society. The essence and the starting point of ruling the country in accordance with the law are to rule the state by constitution. That is, according to the democratic spirit, the concept of human rights and principles of rule of law of the constitution, to

adjust the most important, the most basic social relations; It should protect the constitutional rights of citizens and ensure that they get the legal relief and recovery when they are infringed upon by consolidating and ensuring the supremacy of the people's power. The power of the government that granted in the constitution should get proper exercise and power supervision, and any action that fails to perform one's duties or abuse of power shall be investigated. It is necessary to improve the constitution consciousness of the whole people, especially the ruler's, to establish the supreme authority of the Constitution, and to raise various issues involving public power and civil rights in the state and social life to the height of the constitution to recognize and treat. Ruling the state by constitution means that all aspects of the state and social lives are brought into rule of law with the constitution as the kernel. The state regime is built with the basic value spirit of the constitution, through the implementation of the constitution to provide the guarantee of systemization and legalization for the harmonious development of the country and the society.

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